

PLANNING COMMISSION MINUTES

July 23, 2003

CALL TO ORDER:

Chairman Bob Barnard called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Bob Barnard, Planning Commissioners Gary Bliss, Eric Johansen, Dan Maks, Shannon Pogue, and Vlad Voytilla, and Scott Winter.

Development Services Manager Steven Sparks, AICP; Senior Planner John Osterberg; Senior Planner Alan Whitworth; Senior Transportation Planner Don Gustafson; Assistant City Attorney Ted Naemura; and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Barnard, who presented the format for the meeting.

VISITORS:

Chairman Barnard asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item.

HENRY KANE discussed his concerns with regard to the 114th Avenue Project, expressing his opinion the 114th Avenue Project Advisory Committee had been kept in the dark with regard to amendments to the Comprehensive Plan and the Development Code. He pointed out that if those committee members who were present to vote on the three alternatives for 115th Avenue had been informed that this project would effectively remove their property rights, every property owner present would have voted against this proposal. He noted that the issue appears to be a moving target that continually shifts, suggesting that the Staff Report should state exactly what would happen to the property rights and that a ballot should be provided to the property owners and businesses in the area, including a one-page explanation clarifying exactly what would happen to

1 existing property rights. Observing that he has been unable to locate
2 even one property owner who supports this project, he questioned the
3 necessity of this action, adding that this issue could be addressed
4 through increased density.

5
6 **NEW BUSINESS:**

7
8 Chairman Barnard opened the Public Hearing and read the format for
9 Public Hearings. There were no disqualifications of the Planning Com-
10 mission members. No one in the audience challenged the right of any
11 Commissioner to hear any of the agenda items, to participate in the
12 hearing or requested that the hearing be postponed to a later date. He
13 asked if there were any ex parte contact, conflict of interest or disquali-
14 fications in any of the hearings on the agenda. There was no response.

15
16 **PUBLIC HEARINGS:**

17
18 **I. 8605 SW BEAVERTON HILLSDALE HIGHWAY**

19 **A. CPA 2003-0006 – COMPREHENSIVE PLAN AMENDMENT**

20 **B. ZMA 2003-0008 – ZONING MAP AMENDMENT**

21 This proposal is to amend the Land Use Map in the Comprehen-
22 sive Plan and Zoning Map to designate two lots being annexed
23 into the City through a separate process Corridor (COR) on the
24 Land Use Map and Community Service (CS) on the Zoning Map
25 in place of the current Washington County designation of
26 Community Business District (CBD) with a Corridor overlay,
27 which represents the most similar land use and zoning
28 designations between the two entities. The addresses of these
29 parcels are 8605 and 8635 SW Beaverton/Hillsdale Highway,
30 and they are more specifically identified as Tax Lots 00300 and
31 00400 on Washington County Assessor's Map 1S1-14AD.

32
33 Commissioner Voytilla stated that he had driven by the site and had
34 no contact with any individual(s) with regard to these applications.

35
36 Commissioner Winter announced that he is familiar with the site.

37
38 Observing that he had not made a site visit specific to this application,
39 Commissioner Johansen mentioned that he had recently visited a site
40 in the area.

41
42 Commissioner Bliss pointed out that although he had not made a
43 specific site visit he is familiar with the area.
44

Commissioner Pogue indicated that he had visited the site and had no contact with any individual(s) with regard to this proposal.

Commissioner Maks and Chairman Barnard noted that they had driven by the site with regard to this specific application.

Senior Planner Alan Whitworth presented the Staff Report and offered to respond to questions.

PUBLIC TESTIMONY:

No member of the public testified with regard to this application.

Assistant City Attorney Ted Naemura indicated that he had no comments with regard to this proposal.

The public portion of the Public Hearing was closed.

Observing the proposal meets applicable approval criteria Commissioners Maks, Voytilla, Winter, Pogue, Bliss, and Johansen and Chairman Barnard expressed their support of both applications.

Commissioner Pogue **MOVED** and Commissioner Voytilla **SECONDED** a motion to **APPROVE** CPA 2003-0006 – 8605 SW Beaverton/Hillsdale Highway Land Use Map Amendment, based upon the testimony, reports and exhibits, and new evidence presented during the Public Hearings on the matter, and upon the background facts, findings and conclusions found in the Staff Report dated July 3, 2003.

Motion **CARRIED** by the following vote:

AYES: Pogue, Voytilla, Bliss, Johansen, Maks, Winter, and Barnard.

NAYS: None.

ABSTAIN: None.

ABSENT: None.

Commissioner Pogue **MOVED** and Commissioner Voytilla **SECONDED** a motion to **APPROVE** ZMA 2003-0008 – 8605 SW Beaverton/Hillsdale Highway Zoning Map Amendment, based upon the testimony, reports and exhibits, and new evidence presented during the Public Hearings on the matter, and upon the background facts, findings and conclusions found in the Staff Report dated July 3, 2003.

1
2 Motion **CARRIED** by the following vote:

3 **AYES:** Pogue, Voytilla, Bliss, Johansen, Maks, Winter, and
4 Barnard.

5 **NAYS:** None.

6 **ABSTAIN:** None.

7 **ABSENT:** None.
8

9 7:12 p.m. – Mr. Whitworth left.
10

11 **II. CU 2003-0008 – FANTASY VIDEO 24-HOUR OPERATION**
12 **CONDITIONAL USE**

13 The applicant is requesting Conditional Use approval for additional
14 operating hours beyond the hours of 7:00 a.m. and 10:00 p.m. which
15 are allowed within the Community Service (CS) zone. The video store
16 has been operating on this site since March 1999, and the applicant
17 requests to operate on a 24-hour basis.
18

19 Commissioner Voytilla observed that he is familiar with the site from a
20 prior application, adding that he had done a recent drive-through and
21 had no contact with any individual(s) with regard to this application.
22

23 Commissioner Winter noted that he is familiar with the site as a
24 former Chairman of the NAC.
25

26 Commissioner Johansen mentioned that in addition to being familiar
27 with the site from the previous application, he had visited the site and
28 had no contact with any individual(s) with regard to this proposal.
29

30 Observing that he is familiar with the previous application,
31 Commissioner Maks familiar noted that he had made a site visit in
32 1999 and another this evening, adding that he had no contact with any
33 individual(s) with regard to this application.
34

35 Commissioner Pogue pointed out that he had visited the site.
36

37 Commissioner Bliss and Chairman Barnard explained that they are
38 familiar with the site although they had not visited specifically with
39 regard to this application.
40

41 Senior Planner John Osterberg presented the Staff Report and briefly
42 described the request for extended hours of operation for this existing
43 business, specifically between the hours of 10:00 p.m. and 7:00 a.m.
44 Observing that he is aware that members of the Planning Commission
45 have read the Staff Report, he mentioned that staff is recommending

1 that the Planning Commission hold a Public Hearing and make a
2 decision for denial, or approval with two Conditions of Approval, based
3 upon whether the application meets applicable approval criteria. He
4 described additional materials submitted by the applicant, as well as
5 additional e-mails from Dave Ganz, dated July 15, 2003 and July 18,
6 2003, and a letter from Henry Kane, dated July 23, 2003, observing
7 that copies of these letters have been distributed to members of the
8 Planning Commission. Concluding, he pointed out that Officer Kevin
9 O'Keefe of the Beaverton Police Department is available to address
10 concerns with regard to crime and safety and that Senior Transporta-
11 tion Planner Don Gustafson is available to address questions relating
12 to the Traffic Analysis, and offered to respond to questions.

13
14 Referring to page 16 of the Staff Report, Commissioner Maks
15 requested that line 4 of the last paragraph be modified, as follows:
16 "...operate the ~~restaurant~~ **retail store** beyond the 7:00 a.m. to 10:00
17 p.m. hours of operation in the..." He requested that line 4 of the third
18 paragraph of page 17 of the Staff Report be modified, as follows:
19 "...Corridor designation on this property and the surrounding ~~Cornell~~
20 ~~Road~~ **Beaverton-Hillsdale Highway** properties, described..."

21
22 Commissioner Pogue referred to page 31, specifically the reference to
23 landscaping, expressing his opinion that the landscaping might be too
24 prohibitive and block the view some of the time.

25
26 Mr. Osterberg advised Commissioner Pogue that staff's finding was
27 that the appearance of the landscaping along Beaverton-Hillsdale
28 Highway is not as dense as might be typical, adding that it might be
29 preferable to have a more open and less dense hedge. He confirmed
30 that the Police Department is comfortable with the existing visibility.

31
32 Chairman Barnard referred to page 20 of the Staff Report, specifically
33 with regard to a crime study concerning *D. K. Wild's* and *Fantasy*
34 *Video*, noting that *D. K. Wild's* had generated 41 police incident reports
35 since 1999, 12 of which were important enough to be evaluated by
36 police, adding that of those 12, four trespassing incidents were
37 determined to be significant. He requested clarification regarding how
38 this would potentially compare with a bar that is upon until 2:30 a.m.

39
40 **KEVIN O'KEEFE**, representing the Beaverton Police Department
41 responded to Chairman Barnard's concern with the 41 police incidents
42 reports generated since 1999 at *D. K. Wild's* on SW Henry Street. He
43 explained that this typically is a lower number of incidents in
44 comparison to some of the liquor establishments located throughout

1 the City of Beaverton, emphasizing that the *D. K. Wild's* and *Fantasy*
2 *Video* incidents had not been excessive.

3 Referring to the bottom of page 21 of the Staff Report, Mr. Osterberg
4 under the review of Plan Policy Goal 6.2.1, the second policy a should
5 be revised to b.

6
7 **APPLICANT:**

8
9 **BRADLEY WOODWORTH**, of *Bradley J. Woodworth & Associates,*
10 *PC*, representing the applicant, *Oregon Entertainment Corporation*,
11 introduced members of the applicant team, as follows:

- 12
13
 - Bruce McLaughlin, Certified Land Use Planner;
 - 14 • Ryan Pressy, appraiser who prepared the Market Value
 - 15 Consultation Report;
 - 16 • Kevin Burgee, architect;
 - 17 • Tracy Blakeslee, Principal for *Oregon Entertainment*
 - 18 *Corporation*;
 - 19 • Jim Atwood, owner of the property; and
 - 20 • Lake Perrigüey, of *Bradley J. Woodworth & Associates, PC*.

21
22 Mr. Woodworth requested that Chairman Barnard rule on the
23 applicant's request to cross-examine witnesses.

24
25 Chairman Barnard advised Mr. Woodworth that he intends to follow
26 the standard procedure, observing that this provides for applicant
27 rebuttal at the end.

28
29 Mr. Woodworth pointed out that the applicant has submitted a
30 supplemental statement, including information with regard to due
31 process rights concerning cross-examination of witnesses. Observing
32 that this involves both the 14th Amendment and the 15th Amendment
33 to the United States Constitution, he pointed out that he does not
34 understand why the Oregon Constitution does not contain an express
35 due process clause. Referring to Section 8 of the Oregon Constitution,
36 he noted that it is the applicant's position that the article in Section 8
37 provides a very broad protection for freedom of expression in the State
38 of Oregon, that the materials, products and services vended by the
39 applicant are protected by Article 1 Section 8, and that it is incumbent
40 upon government agencies not to disfavor the treatment of the vendors
41 of such protected expression in relation to the treatment of vendors of
42 other types of products, goods, or services. He mentioned that the City
43 of Beaverton has in the past granted Conditional Use Permits to other
44 types of 24-hour vendors, including a *Jack-in-the-Box Restaurant*. He

1 emphasized that the City of Beaverton is obliged to treat vendors of
2 protected expressive materials equally to vendors of other types of
3 goods, products, or services.
4

5 Mr. Woodworth pointed out that the Staff Report did indicate that the
6 application meets all applicable approval criteria, adding that the
7 situation differs from the situation that existed during the original
8 application in 1999. He mentioned that since that time, the
9 Development Code has been amended significantly, observing that the
10 prior code did not contain the language that currently exists in Section
11 40.15.05, and that specifically, the current version of the Development
12 Code is more favorable with regard to the granting of applications. He
13 expressed his opinion that there would be no substantial impact that
14 could not be mitigated created by granting this request, adding that
15 the applicant is willing to accept any reasonable Conditions of
16 Approval imposed upon this application.
17

18 Observing that the original proposal was a new concept to the City of
19 Beaverton and had created some public outcry in 1999, Mr. Woodworth
20 pointed out that this establishment has been in operation for greater
21 than four years. He expressed his opinion that the past denial had
22 been based upon the potential for various types of mischief, including
23 possible criminal activity and prostitution, as well as potentially
24 decreased property values. He explained that following four years of
25 essentially problem-free operations and no negative impact, the
26 applicant has gone through great lengths to develop what he considers
27 an appropriate evidentiary record that indicates that there are no
28 impacts associated with this proposal. He noted that the police
29 incidents included only one prostitution charge, unrelated to
30 customers, emphasizing that this incident actually involved a decoy
31 operation initiated by the Beaverton Police Department.
32

33 **BRUCE McLAUGHLIN** indicated that although his credentials are
34 in the record, he would like to clarify that he is a member of the
35 *American Institute of Certified Planners* (AICP), the equivalent of
36 licensing in 48 of the 50 states, including the State of Oregon.
37 Observing that Mr. Osterberg had adequately reviewed the applicable
38 standards for approval of a Conditional Use, he discussed the site,
39 which he described as ideal for the proposed operation, emphasizing
40 that while the Staff Report indicates that the nearest residence is
41 located 360 feet from the site, the applicant has determined that this
42 distance is closer to 450 feet. He pointed out that the site is not visible
43 from this home, adding that it is separated by grades and other
44 buildings, creating less potential for impact than the fast food

1 restaurants that have received approval for extended hours of
2 operation.

3 Noting that this specific use is permitted under the Comprehensive
4 Plan, Mr. McLaughlin referred to the eight goals listed on the walls of
5 the Council Chambers, observing that three are not applicable and
6 that the proposal is in full compliance with the remaining five goals.
7 He described the establishment as a very upscale retail store,
8 emphasizing that it differs greatly from the stores of the 1970's and
9 1980's when the myth of secondary effects was developed, adding that
10 the clientele includes a high percentage of couples and women as
11 customers. Referring to the myth of secondary effects, he pointed out
12 that while these effects have never been established, it is interesting to
13 note that planning in the State of Oregon is described as the shining
14 example of how to do it right in the United States. Noting that there
15 had been concern with the potential for a higher ratio of incidents than
16 at other video stores, he pointed out that *Fantasy Video* had generated
17 fewer incidents than either of the local *Hollywood Video Stores*. He
18 mentioned that of the 41 incidents at *D. K. Wild's*, only four had been
19 considered significant, observing that four significant incidents in four
20 years could not be considered excessive by number or definition.

21
22 Mr. McLaughlin discussed concern with a potential decrease in
23 property value, emphasizing that no evidence of harm associated with
24 property values has been established. He pointed out that a fast food
25 robbery is more likely to occur when only a few crew members are
26 present, either early in the morning before customers arrive, or late at
27 night, during closing. He noted that establishments operating on a 24-
28 hour basis often provide what he referred to a safe haven for people
29 who are experiencing problems (accidents, running out of gas, broken
30 down cars) during the night. He noted that the proposed additional
31 hours of operation occur during times when the Police Department is
32 generally not operating at its peak level, adding that landscaping must
33 be designed to allow for adequate visibility for security purposes.
34 Concluding, he requested approval of the application and offered to
35 respond to questions.

36
37 Expressing his appreciation of the applicant's submittal, Commissioner
38 Maks commended Mr. McLaughlin for the scientific and analytical
39 methodology utilized to obtain information. He pointed out that the
40 premise with regard to incident level per square foot might differ if
41 applied to different uses and number of patrons served.
42

1 Mr. McLaughlin concurred with Commissioner Maks' statements,
2 observing that the use could conceivably change and that increased
3 patronage increases the potential for increased problems.

4
5 Commissioner Pogue requested clarification with regard to why one of
6 the six properties operated by *Oregon Entertainment Corporation*
7 included in study had been excluded.

8
9 Mr. Woodworth advised Commissioner Pogue that one of the six
10 properties had been excluded because it involves a relatively new
11 operation less than one year old, adding that there was not adequate
12 information that would serve the purpose of the study with regard to
13 this property.

14
15 **PUBLIC TESTIMONY:**

16
17 **JIM ATWOOD**, property owner for the site leased to *Fantasy Video*,
18 noted that he has been involved as a leasing agent and with profess-
19 sional real estate for 35 years, adding that he is generally familiar
20 with commercial and retail operations. Expressing his opinion that the
21 Mr. Blakeslee is what he considers a top-grade retailer, he pointed out
22 that the inside of the store is very similar to that of a *Fred Meyer Store*,
23 adding that it is well-lit and includes professional displays. He
24 mentioned that the exterior is extremely well-maintained, adding that
25 there has been no criminal behavior associated with this or any of the
26 other stores. He expressed his support of approval of the request for
27 an extension of the operating hours.

28
29 **HENRY KANE** stated that he is raising his hand and affirming that
30 the personal knowledge testimony he is providing is based upon
31 personal knowledge and is true. Observing that he worked in the office
32 of a tenant of Park Plaza West in the 1970's, he emphasized that he
33 would not consider re-leasing this property due to the existence of the
34 sex-industry establishment, and expressed his opinion that this type of
35 establishment creates what he referred to as a "low-rent district". He
36 pointed out that there is a great deal of evidence indicating that this
37 type of business is very harmful to a community, expressing his
38 opinion that it is not necessary. He pointed out that unlike Mr.
39 Woodworth, Mr. McLaughlin, and Mr. Atwood, he resides in the City of
40 Beaverton, adding that the Attorney General had determined that the
41 decision with regard to what is wrong with obscenity has been
42 challenged before the Supreme Court.

43

1 Commissioner Maks requested clarification from Mr. Kane with regard
2 to the number of clients that had visited his law firm between the
3 hours of 10:00 p.m. and 7:00 a.m.

4
5 Mr. Kane advised Commissioner Maks that approximately 10 or 20
6 clients per year had visited his law firm between the hours of 10:00
7 p.m. and 7:00 a.m.

8
9 **PAUL SCHAEFER**, on behalf of himself and his wife, **AUDRA**
10 **SCHAEFER**, described the existing retail and family oriented
11 shopping and businesses in the area, expressing his opinion that this
12 proposal is not compatible with the existing uses. He expressed his
13 strong opposition to this proposal, citing known secondary effects,
14 particularly with regard to children, emphasizing that this is why
15 other jurisdictions do not permit these uses near schools, churches, and
16 residential districts. Observing that this proposal is not in compliance
17 with Criteria No. 5 which addresses livability, he pointed out that this
18 issue can not be mitigated through any means other than location.

19
20 Commissioner Maks pointed out that the Planning Commission is
21 required to have an open mind and make an appropriate decision
22 based upon evidence presented at this time, and questioned whether
23 Mr. Schaefer has this information available at this time.

24
25 Mr. Schaeffer advised Commissioner Maks that he does not have the
26 appropriate information available at this time.

27
28 Commissioner Johansen pointed out that the applicant has operated at
29 this site for four years and questioned whether Mr. Schaefer has
30 observed any evidence of any secondary effects.

31
32 Mr. Schaeffer noted that he has not personally observed any secondary
33 effect as a result of this use.

34
35 **APPLICANT'S REBUTTAL:**

36
37 Expressing his tremendous respect for what he referred to as the legal
38 trailblazing accomplished by Mr. Kane during his long and
39 distinguished legal career as an attorney in the State of Oregon, Mr.
40 Woodworth emphasized that with regard to his comment indicating
41 that he would no longer consider locating his business in Park Plaza
42 West, an earlier foreclosure of the property and subsequent
43 bankruptcy had resulted in the purchase by the current owner, Mr.
44 Atwood. He emphasized that the change in ownership had brought

1 about a substantial improvement to earlier problems, including
2 mismanagement and a high vacancy rate, which do not exist at this
3 time.

4
5 Mr. McLaughlin addressed Mr. Schaefer's comments, referring to a
6 snapshot following page 16 in his report, observing that while the
7 center bull's eye is what Mr. Schaeffer is talking about, this informa-
8 tion was not obtained appropriately and is not accurate. He explained
9 that some of the more recent studies are showing the exact opposite
10 and provide an entirely different conclusion. He pointed out that the
11 courts are beginning to require real proof of harm, adding that the
12 covenants are not able to demonstrate proof of this harm, adding that a
13 *Hollywood Video Store* had an incident involving indecent exposure.

14
15 Commissioner Maks noted that there are different levels and/or
16 qualities of retailers, adding that the level of calls generated for
17 *Fantasy Video* were significantly lower than those associated with Mr.
18 *Peeps*. He questioned how the applicant would feel with regard to
19 conditioning the Conditional Use for extended hours to the present
20 applicant and present occupant.

21
22 Mr. Woodworth advised Commissioner Maks that the applicant does
23 not have an issue with this potential Condition of Approval.

24
25 Mr. Atwood observed that as the property owner, his preference is that
26 the Conditional Use Permit would run with the land, adding that the
27 applicant has gone to an extraordinary amount of effort to get this
28 Conditional Use. Observing that this involves what he considers a
29 high quality building, he pointed out that a future tenant might like
30 the option of operating on a 24-hour basis.

31
32 Observing that this Conditional Use involves a video store,
33 Commissioner Maks noted that any restaurant would involve a
34 different use and would be required to obtain a separate Conditional
35 Use Permit.

36
37 Commissioner Johansen emphasized that the terms occupant and
38 applicant might differ from the term operator.

39
40 Mr. Osterberg explained that the Commission appears to believe that
41 future uses qualifying for 24-hour operation would be limited to the
42 same use, specifically a video store, staff does not agree, observing that
43 anything within the category of retail use would be allowed for these
44 purposes. He pointed out that this would not include a restaurant,

1 which is a separate category, adding that staff supports changing
2 Condition of Approval No. 1 to specifically cite the name of this
3 applicant and business, and offered to respond to further questions.

4
5 On question, Mr. Naemura indicated that he had no comments with
6 regard to this application.

7
8 Development Services Manager Steven Sparks responded to Mr.
9 Kane's comments, emphasizing that while no factors have changed
10 since the denial by the City Council in 1999, Mr. Kane, there have
11 been changes to both the Development Code and Comprehensive Plan
12 since that time.

13
14 8:24 p.m. to 8:34 p.m. – recess.

15
16 The public portion of the Public Hearing was closed.

17
18 Observing that the proposal meets applicable approval criteria,
19 Commissioner Winter expressed his support of the application.

20
21 Emphasizing that while his moral and religious beliefs are opposed to
22 the nature of this business, Commissioner Pogue expressed his opinion
23 that it is unfortunate that these beliefs are not included in the criteria,
24 adding that the application does meet applicable criteria and that he
25 would support a motion for approval.

26
27 Commissioner Bliss explained that he was unable to find any
28 information preventing him from approving the proposed extended
29 hours, adding that the application meets applicable approval criteria
30 and that he would support a motion for approval.

31
32 Commissioner Voytilla stated that regardless of personal beliefs, the
33 Planning Commission is responsible to review each application based
34 upon the criteria within the Development Code, adding that he would
35 support a motion for approval.

36
37 Emphasizing that the Conditional Use does typically run with the
38 land, Commissioner Johansen expressed his opinion that
39 Commissioner Maks' suggestion with regard to a potential Condition of
40 Approval limiting the approval to this applicant and this use is
41 appropriate. He pointed out that the fact that there is not a lot of
42 public present is indicative of something, which in his opinion means
43 that there have not been a great deal of problems at this site
44 throughout past four year, adding that these problems have been

1 minimal if not non-existent. Observing that he concurs with
2 Commissioner Maks' suggestion that Condition of Approval No. 1 be
3 revised to limit this approval to the current applicant and use, he
4 pointed out that he would support a motion for approval.

5 Commissioner Maks emphasized that it is necessary to measure the
6 application against applicable approval criteria regardless of personal
7 feelings, adding that this is an allowed use and that the application
8 involves only the proposed extension of hours. He pointed out that
9 unless substantial impacts can be identified, approval is appropriate,
10 adding that there are no substantial or even minimal impacts with
11 regard to this proposal that need to be addressed. He mentioned that
12 this use serves approximately 8% of our population in some fashion,
13 adding that Condition No. 1 should be modified to provide that this
14 approval be limited to the applicant and not run with the land.

15
16 Chairman Barnard expressed his opinion that the application meets
17 applicable approval criteria, adding that he would support a motion for
18 approval, including a proposed change to Condition of Approval No. 1.

19
20 Chairman Barnard mentioned that although action would be taken
21 tonight with regard to approval or denial of this application, Mr.
22 Kane's request to hold record open for seven days is granted.

23
24 Commissioner Maks **MOVED** and Commissioner Winter **SECONDED**
25 a motion to **APPROVE** CU 2003-0008 – Fantasy Video 24-Hour
26 Operation Conditional Use, based upon the testimony, reports and
27 exhibits, and new evidence presented during the Public Hearings on
28 the matter, and upon the background facts, findings and conclusions
29 found in the Staff Report dated July 16, 2003, as modified this evening,
30 including all evidentiary information provided by applicant, much of
31 which is included in a Staff Memorandum dated July 23, 2003,
32 including Conditions of Approval Nos. 1 and 2, and modifying
33 Condition of Approval No. 1, as follows:

- 34
35 1. The Conditional Use permit granted shall not run with the land, rather,
36 shall be limited to the applicant, Oregon Entertainment Corporation,
37 as the operator and occupant of the premises ~~and shall continue to be~~
38 ~~valid upon a change of ownership of the site or structure.~~

39
40 Mr. Osterberg requested clarification regarding Chairman Barnard's
41 reference to a request to have record left open for seven days.

42
43 Chairman Barnard clarified that Mr. Kane had made this request.
44

1 Observing that the applicant has no objection to granting Mr. Kane's
2 request to leave the record open for seven days, Mr. Woodworth
3 requested that the applicant be provided with a reasonable period of
4 time to respond to any additional submittals.
5

6 Mr. Naemura advised Mr. Woodworth that the applicant's rights would
7 be protected under ORS.
8

9 Motion **CARRIED** by the following vote:
10

11 **AYES:** Maks, Winter, Bliss, Johansen, Pogue, Voytilla, and
12 Barnard.

13 **NAYS:** None.

14 **ABSTAIN:** None.

15 **ABSENT:** None.
16

17 **MISCELLANEOUS BUSINESS:**
18

19 Chairman Barnard requested clarification with regard to anticipated
20 attendance over the next four weeks.
21

22 Commissioner Johansen observed that he would not be available on
23 August 6, 2003 or August 27, 2003.
24

25 Commissioner Bliss noted that he would be absent on August 13, 2003.
26

27 Pointing out that his work schedule would be quite hectic the last two
28 weeks of August, Commissioner Voytilla mentioned that he may be
29 absent on August 20, 2003 and August 27, 2003.
30

31 Observing that he would be unavailable on August 6, 2003, as well as
32 Commissioner Johansen, Chairman Barnard expressed concern with a
33 potential lack of quorum on August 6, 2003.
34

35 Commissioner Pogue mentioned that he would be absent on both
36 August 6, 2003 and August 13, 2003.
37

38 Chairman Barnard expressed his appreciation to Commissioner Maks
39 for volunteering to chair the meeting of August 6, 2003.
40

41 The meeting adjourned at 8:48 p.m.